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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 115

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, AN ILLINOIS CORPORATION,

Appellant,

vs.

MORVIN DUEL, COMMISSIONER OF INSURANCE OF THE STATE OF WISCONSIN.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

JOHN E. MARTIN,
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HAROLD H. PERSONS,
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Counsel for Appellees.

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Respondent.

APPEAL FROM SUPREME COURT OF THE STATE OF WISCONSIN.

APPELLEE'S STATEMENT OPPOSING JURISDICTION.

Pursuant to Paragraph 3 of Rule 12 of the Rules of the United States Supreme Court, appellee files this statement

opposing appellate jurisdiction. This statement is made and filed as applicable to both of the above captioned matters.

The appellant, State Farm Mutual Automobile Insurance Company, an Illinois corporation, filed a single petition for allowance of appeal captioned in both of the above entitled cases. With it was filed likewise a statement of jurisdiction similarly captioned, and a single order likewise captioned was entered by Hon. Marvin B. Rosenberry, Chief Justice of the Supreme Court of the State of Wisconsin, on April 28, 1944, allowing the same. Other papers requisite to appeal were likewise filed and captioned in both matters. Accordingly this statement is similarly captioned and made applicable to both. The parties, by stipulations captioned in both matters and filed with the Clerk of the Supreme Court of the State of Wisconsin have designated the parts of the record to be transmitted to this court and that a single companion record may be so transmitted combining both of the above-entitled matters on appeal to this court.

Nature of the Case.

This appeal is, or if it be deemed there are two appeals they are, from judgments of the Supreme Court of the State of Wisconsin affirming the denials of annual licenses of the appellant to do an insurance business in the State of Wisconsin during the license years May 1, 1942 to April 30, 1943 and May 1, 1943 to April 30, 1944, respectively. The decision of the Wisconsin Supreme Court in the matters dated January 18, 1944 is reported *State Farm Mutual Automobile Insurance Co.* v. *Duel*, 244 Wis. 429 (Adv. Sh.) 12 N. W. (2) 696, and motion for rehearing was denied on March 14, 1944.

Said judgments of the Supreme Court of Wisconsin entered pursuant to such decision affirmed judgments of the

dismissing actions commenced by the appellant to enjoin the appellee Commissioner of Insurance of the State of Wisconsin from interfering with the appellant doing business in the State of Wisconsin during said license years and to compel him to issue to it licenses for such years. The refusal of the appellee Commissioner of Insurance of the State of Wisconsin to issue licenses to the appellant for such years is based upon the failure of the appellant to comply with Section 201.18 of the Wisconsin Statutes requiring every insurance corporation doing business in Wisconsin to set up and maintain an unearned premium or re-insurance reserve in respect to all premiums and show the same as a liability in the annual statement it is required to file with the appellee each year.

The appellant during the license years involved set up on its books and maintained such unearned premium or reinsurance reserve in respect to all premiums collected by it except life membership fee premiums, the appellant continuing the use of the life membership fee plan of insurance outside of the State of Wisconsin during such years. The Supreme Court of Wisconsin in its decision in the instant cases held that the provisions of Section 201.18 Wisconsin Statutes require that an unearned premium or reinsurance reserve be set up and maintained in respect to *all* premiums (including life membership fee premiums) on *all* policies and that in order for an insurance company, foreign or domestic, to do business in Wisconsin it must comply with the reserve requirements of such statute as so construed. Accordingly it affirmed the denial of the licenses to appellant for the license years involved because the appellant, by not having any reserve set up in respect to life membership fee premiums it had collected, had not complied with the requirements of this section and therefore was not entitled

The appellant here, as it did in the Supreme Court of Wisconsin, contends that as so applied the provisions of Section 201.18 of the Wisconsin Statutes are violative of the due process, impairment of contract, and full faith and credit provisions of the Constitution of the United States. The Supreme Court of Wisconsin addressed itself to such contentions and expressly held that they are without merit.

Statutes Involved.

The provisions of Section 201.18 of the Wisconsin Statutes here under attack are as follows:

> "201.18 *Reserves, basis for.* (1) The unearned premium or reinsurance reserve for every insurance company when no other statutory provision is made therefor, shall be computed by the commissioner by setting up fifty per cent of the premiums received on all risks that have one year or less to run, and pro rata of all premiums on risks that have more than one year to run. In the case of perpetual risks or policies, the whole amount of premium paid shall be set up as a reserve. Every such company shall show its reserve, computed upon this basis, as a liability in the annual statement required by section 201.50.
>
> "(2) * * *"

Of importance as related to the question of the validity of the above provision are the following provisions of the Wisconsin Statutes, now in force:

> "201.32 *Foreign companies; admission.* (1) No foreign insurance company shall directly or indirectly transact any insurance business in this state except upon compliance with the requirements of this section.
>
> "(2) * * *
>
> "(3) A mutual company shall satisfy the requirements as to solvency and the limitations as to expenses exacted of like domestic companies.

"(4) The foreign company shall file a declaration that it desires to transact insurance in this state, and that it will accept a license therefor to terminate in case it shall violate or fail to comply with any provision of law, or in case its capital shall be impaired to the extent of twenty per cent, and shall not be made good within such time as the commissioner shall require, if such commissioner shall declare its license revoked therefor.

"(5) * * *

"(6) * * *"

"201.34 *License; visitation; foreign companies.* (1) The commissioner shall upon being satisfied by investigation that any insurance company applying for license or relicense has fully complied with all provisions of law, and that its methods and practices in the conduct of its business and the character and value of its assets are such as to safeguard the interests of its policyholders and the people of the state, issue to such company a license to transact business in this state, and shall renew the same from year to year so long as such company shall meet all requirements of law; and shall give to every agent of such company a certificate that such company has complied with all the provisions of law and is authorized to transact business in this state, which license to the company and certificate to agents shall continue in force until the first day of May next after the effective date thereof, unless sooner revoked.

"(2) The commissioner shall have the same supervision and make the same examination of the business and affairs of every licensed foreign insurance corporation as of domestic corporations doing the same kind of business, and of its assets, books, accounts and general condition. * * *

"(3) * * *

"(4) * * *".

"201.50 *Reports to commissioner, forms, contents, penalties.* (1) Every insurance company shall annu-

ally by March first file with the commissioner a sworn statement concerning its affairs for the preceding calendar year, upon such forms and including such information as shall be prescribed by him. The statement of any company organized under the laws of any foreign country shall set forth its business and affairs in the United States, verified by its resident manager in the United States. The commissioner shall prepare forms of annual statement for the various kinds and classes of insurance companies and societies, suitable for eliciting a true and complete exhibit of the financial condition, character and methods of each company or society, and he shall include in such forms, requisition for information upon all important elements of business transacted in each kind and class of insurance, including gain and loss, and any matter, condition or requirement imposed by law and tending to a strict accountability of the management. The commissioner shall furnish annual statement blanks to the insurance companies and societies, and shall cause the information contained in the annual statements to be arranged in convenient form and published in his annual report.

"(2) No company or society shall be relicensed until such annual statement has been so filed and all other provisions of the law complied with; provided, the commissioner may extend the time for filing such annual statement to March thirty-first. • • •"

"206.55 *Insurers to comply with law.* No insurance company shall do any insurance business or make any guaranty, contract or pledge for the payment of annuities or endowments or money to the families or representatives of any policy or certificate holder, or the like, in this state or with any resident of this state except according to the conditions and restrictions of the statutes of this state."

Statement of Facts.

For many years prior to 1939 the appellant, State Farm Mutual Automobile Insurance Company, an Illinois corpo-

ration, had endeavored to obtain a license to do an automobile insurance business in Wisconsin, but the various Commissioners of Insurance consistently took the position that its methods were such that it could not and did not comply with the provisions of the Wisconsin statutes regulating insurance and refused to license it. In 1939 application was made to the then Commissioner of Insurance, who took a contrary position and on July 13, 1939, issued it a license as a foreign insurance company to do all forms of automobile insurance business in Wisconsin upon the life membership fee plan for the license year commencing May 1, 1939, and expiring April 30, 1940. This was the first time the appellant did any busines in the state and the first and only license it has ever had to do so.

In the course of matters the appellee, Morvin Duel, the present Commissioner of Insurance, after his appointment and qualification on September 27, 1939, addressed himself *inter alia* to the legality of appellant carrying on its insurance business in the state and concluded that its plan of insurance was contrary to the Wisconsin statutes. Accordingly when appellant applied in due course for renewal of or issuance of a license for the next license year, May 1, 1940, to April 30, 1941, he refused to grant or issue it a license because *inter alia* it did not satisfy the requirements of the Wisconsin statutes. His position in this regard was confirmed by the decision of the Wisconsin Supreme Court in *Duel* v. *State Farm Mutual Automobile Ins. Co.* (March 13, 1942) 240 Wis. 161, 1 N. W. (2) 887, 2 N. W. (2) 871.

The appellant then abandoned the use of the life membership fee plan of insurance in Wisconsin, but continued to use it in other states in which it does business and applied for the license year May 1, 1942 to April 30, 1943, using a level premium plan in Wisconsin. The appellee refused to grant such license because *inter alia* it did not set up and maintain, and show in its annual statement, *any* unearned

premium or reinsurance reserve, as required by Section 201.18 Wisconsin Statutes, in reference to life membership fee premiums, his contention being that this statute requires such reserve be set up and shown in respect to *all* premiums (which includes life membership fees) as a requirement to obtaining a license to do business in the state.

Appellant then on May 20, 1942 commenced an action in the Circuit Court for Dane County, State of Wisconsin, against the appellee, Morvin Duel, as Commissioner of Insurance, to enjoin him from interfering with its doing business in the state, and to compel the issuance to it of a license, for the license year May 1, 1942 to April 30, 1943. The appellee answered and following a state practice provision moved for summary judgment dismissing said action upon the merits.

Before decision was reached on this motion another license year, May 1, 1943 to April 30, 1944 had come around, and there being no change as respects the matters involved, the appellee similarly refused to issue a license for that year for the same reasons. Appellant then commenced another like action in the Circuit Court for Dane County. By stipulation the motion for summary judgment in the 1942 action was made applicable to this 1943 case. The Circuit Court on July 3, 1943 granted the appellee's motions in both cases and entered judgments dismissing them and vacating the injunctions *pendente lite* in the cases.

Appellant, State Farm Mutual Automobile Insurance Co., then took separate appeals to the Supreme Court of Wisconsin from these judgments. The cases were briefed, heard and decided together. The Supreme Court of Wisconsin rendered its decision January 18, 1944 reported 244 Wis. 429, (Adv. Sh.), *12* N. W. (*2*) 696, sustaining the Circuit Court. It held that Section 201.18 Wisconsin Statutes requires that an unearned premium or reinsurance reserve be maintained in respect to *all* premiums, which includes

life membership fees, in respect to the entire business of a company. Motions for rehearing were denied March 14, 1944.

It is from these judgments of affirmance of the lower state court that appellant here appeals.

No Substantial Federal Question Is Presented.

1. *Section 201.18 (1) Wisconsin Statutes as construed and applied by the Supreme Court of Wisconsin is not violative of the due process provisions of the Fourteenth Amendment to the Constitution.*

The provisions of Section 201.18 (1) Wisconsin Statutes prescribe a requirement that must be met by all mutual insurance companies, domestic and foreign, in order to do business in Wisconsin. It prescribes a uniform minimum yardstick of over-all solvency that is used for comparative purposes in testing financial soundness and responsibility. This is shown by the language of the statute. It says that such reserve shall apply to "every insurance company" and in the last sentence specifically requires that "every" company "*shall* show" such reserve as a "liability" in the statement it is required to file annually by Section 201.50 Wisconsin Statutes.

The State of Wisconsin through legislative enactment of this statute has made this reserve a liability that every insurance company doing business in the state must show to be taken into account in viewing the financial situation of the company. This reserve is prescribed as one of the elements to be considered and used in passing upon and examining into whether an insurance company doing business in the state is in sound financial condition and has sufficient assets to meet all its liabilities. It may or not be a rather high requirement, but it is a protective measure enacted in the interests of the citizens of Wisconsin and aimed

at assuring that insurance companies with which they insure in the state are in such financial condition as to have adequate and sufficient assets to be able with facility to meet all their liabilities at all times.

The maintenance of such a reserve does have a definite benefit relationship to Wisconsin citizens. Appellant asserts that it does not because it creates a liability where none exists in respect to life membership fees in the other states where that plan of insurance is used by appellant. Its position is that in those states the life membership fees are not considered as a part of premium, are deemed earned at once when paid, and so no part thereof is returnable as unearned premium upon cancellation of policies. This assumes the statute provides for the maintenance of the reserve solely as a fund out of which return premiums are to be paid in the event of cancellations. On the contrary this statute does not so limit this reserve and requires the reserve in any event. It is a legislative recognition that during the unexpired terms of policies a company has a risk of liability on them which may accrue and provides a method for measuring such future potential liabilities so as to assure due allowance therefor for purposes of determining the financial condition both as to soundness and solvency. It merely sets up bookkeeping requirements. There is no segregation of assets or trust finding of them for a particular liability.

These reserve requirements are equally applicable to foreign and domestic companies. Section 201.32 (3) Wisconsin Statutes.

By Section 201.18 (1) Wisconsin Statutes the State of Wisconsin simply tells all insurance companies that if they wish to do business in the state they must meet this reserve requirement. This involves no attempt to legislate extraterritorally or in relation to something that is of no concern

of Wisconsin. It does not condemn the use of the company's life membership fee plan outside the state, but merely sets up a standard or yardstick that must be complied with. Such a requirement is not extra-territorial—it is territorial.

To deny the state of Wisconsin powers to so act would be to deny it the power to act as a sovereign within its own borders for the protection of its own people.

That the prescribing of such reserve requirements is well within state power is definitely established by *Hoopeston Canning Co.* v. *Cullen* (1943), 318 U. S. 313, 63 S. Ct. 602, 87 L. Ed. 777.

The statute here involved does not in any way provide in respect to rights of residents of Wisconsin to enter into contracts of insurance outside the state. Rather it prescribes qualifications and conditions that an insurance company must meet in order to do business in the state. The case of *Allgeyer* v. *Louisiana* (1897), 165 U. S. 578, 17 S. Ct. 427, 41 L. Ed. 832 cited by appellant is thus not in point.

Here there is no attempt even to exert state authority beyond its borders. The authority asserted rather is strictly confined to acts within its borders. The statute merely imposes conditions upon the right to do business within them and in no way prohibits or regulates what the company does in other states. Accordingly *New York Life Ins. Co.* v. *Head* (1914), 234 U. S. 149, 34 S. Ct. 879, 58 L. Ed. 1259, cited by appellant is beside the point here raised.

Similarly, the other cases cited by appellant to sustain its contention that Wisconsin has no power to prescribe this reserve as a condition to doing business in its borders are not in point.

2. The Provisions of Section 201.18 (1) Wisconsin Statutes as Applied Are Not Violative of the Full Faith and Credit Provision of Article IV, Section 1 of the Constitution of the United States.

The appellant does not point out in its jurisdictional statement in what way it contends the statute under consideration fails to give full faith and credit to public acts, records or judicial proceedings of some other state. Any attempt to state such contention immediately makes apparent its utter lack of merit.

Rather if appellant's contention were correct the result would be that instead of Wisconsin being able to exercise its own sovereign powers within its own borders by establishing standards of solvency that insurance companies must meet in order to do business in Wisconsin the other states would be permitted to act with an extra-territorial effect and fix the standards for Wisconsin.

3. The Provisions of Section 201.18 (1) Wisconsin Statutes as Applied do Not Impair the Obligations on Contracts Made by Appellant in Other States.

Here again appellant does not in any way support its assertion of violation of the provision against impairment of contract in Article I, Section 10 of the Constitution of the United States by specifying in what way the application of Section 201.18 (1) Wisconsin Statutes effects any impairment. Its assertion thereof is entirely without merit.

As previously pointed out this statute has no extra-territorial effect. In fact it in no way purports to modify or change the insurance policies entered into outside the State of Wisconsin. They remain the same in all respects. This statute merely prescribes what reserves shall be set up in reference thereto while the company does business in Wisconsin. Such reserve requirements being merely bookkeeping or accounting matters for use as over-all solvency con

siderations obviously make no change in the insurance contracts themselves. As said in *Osborn* v. *Ozlin* (1939), 310 U. S. 53, 60 S. Ct. 758, 84 L. ed. 1074, and approved in *Hoopeston Canning Co.* v. *Cullen* (1943), 318 U. S. 313, 63 S. Ct. 602, 87 L. ed. 777 that state action of this kind aimed at protection of assureds resident therein may have incidental repercussions beyond the jurisdiction of the state is of no constitutional import.

Conclusion.

To deny the State of Wisconsin power to prescribe in this manner would be the equivalent of saying that it cannot protect its own people within its borders, but must permit other states and the insurance companies to establish standards of solvency which Wisconsin must accept, whether it will or not. Such is not the law. The foregoing clearly shows that the decision of the Supreme Court of Wisconsin that Section 201.18 (1) Wisconsin Statutes as interpreted and applied by it does not violate the Constitution of the United States as asserted by appellant is so plainly right as not to require argument. Therefore no substantial federal question is presented. Not only should the appeals be dismissed but upon the motion of the appeal to dismiss or affirm, which accompanies this statement, the decision of the Supreme Court of Wisconsin should be affirmed.

Respectfully submitted,

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HAROLD H. PERSONS,
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Counsel for Appellee.

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MOTION TO DISMISS APPEAL OR AFFIRM.

Comes now Morvin Duel, Commissioner of Insurance of Wisconsin, Appellee herein, by John E. Martin, Attorney General of the State of Wisconsin and Harold H. Persons, Assistant Attorney General of the State of Wisconsin, its

counsel, and moves this Court to dismiss, with costs, the appeal taken herein to this Court by the State Farm Mutual Automobile Insurance Company, an Illinois corporation, from the judgments of the Supreme Court of the State of Wisconsin, dated January 18, 1944, upon the following grounds:

1. No substantial federal question is presented.

2. The decision of the Supreme Court of Wisconsin was so plainly right as not to require reargument.

In the alternative appellee moves this Court to affirm on the ground that the question on which the decision of the cause depends is so unsubstantial as not to need further argument.

Dated this 18th day of May, 1944.

JOHN E. MARTIN,
Attorney General of Wisconsin;
HAROLD H. PERSONS,
Assistant Attorney General of Wisconsin,
Counsel for Appellee.